

REMARKS

This Reply and Amendment is intended to be completely responsive to the final Office Action dated October 28, 2008 and the Advisory Action dated January 9, 2009, and is intended to place the claims in condition for allowance. Claims 1-6, 8, 10-23, 25-27, 29-40, 42-58 and 62-64 are pending in this Application. Claims 1-6, 8, 10-23, 25-27, 29-40, 42-58 currently stand rejected. Claims 7, 9, 24, 28, 41 and 59-61 were previously canceled without prejudice to further prosecution on the merits. The Applicants acknowledge that the after-final Amendment filed on December 22, 2008 was not entered.

Upon entry of this Amendment, independent Claims 1 and 37 will be amended to recite a combination of subject matter indicated by the Examiner to be allowable, and independent Claims 25 and 31 will be amended to dependent form and depend from independent Claim 1 (as amended). Further upon entry of this amendment, dependent Claims 2, 5, 32-36, 38 and 42 will be amended to provide claims of varying scope and to depend from allowed/allowable claims, and Claims 3, 4, 20-23, 39, 40 and 54-58 will be canceled without prejudice to further prosecution on the merits.

The Applicants respectfully request entry of this Amendment and reconsideration of the present Application in view of the foregoing amendments and in view of the reasons that follow.

Telephonic Interview

A telephonic interview was conducted on January 14, 2008 between Examiner Turk and the undersigned representative of the Applicants to discuss the Advisory Action. The Applicants clarified their understanding that independent Claims 1 and 37 would be allowable if amended to recite 70-90% platinum corresponding to the 10-30% iridium of the alloy for the electrode.

The Examiner also questioned if the specification provided support for, and enabled, the recitation in Claims 1 and 37 of “wherein at least one of the electrodes comprises a platinum alloy”.

The Applicants agreed to file a second after-final response to amend the claims as discussed, and to identify the support and enablement in the specification for an electrochemiluminescence cell in which only one of the working electrode and the counter electrode comprise a platinum alloy.

The Specification

The Applicants respectfully direct the Examiner's attention to the following sections of the Specification (among others) for support and enablement of an electrochemiluminescence cell in which only one of the working electrode and the counter electrode comprise a platinum alloy:

Paragraph 0019, lines 7-10, which state: "[t]he working electrode may comprise the same electrode material as the counter electrode or may be different (e.g., Pt, a Pt alloy, Ir, a Pt-Ir alloy, Rh, a Pt-Rh alloy, etc.)".

Paragraph 0069, lines 1-4, which state: "[i]n one preferred embodiment, one or both of the working and counter electrodes are fabricated of an electrode material that has an increased oxidation resistance and is, therefore, less prone to etching".

The Applicants respectfully submit that independent Claims 1 and 37 (and their respective dependent claims) are supported and enabled by the Specification.

Allowed/Allowable Subject Matter

On page 12 of the Detailed action, the Examiner stated that "Claims 62-64 are allowed." The Applicants thank the Examiner for the indication of allowed subject matter.

On page 18 of the Detailed Action, the Examiner stated that "if Applicant were to amend claim 1 to include a platinum electrode that is alloyed with Ir in the range of 10-30% weight percent, such an independent claim, and any subsequent dependent claims, would be found allowable".

The Applicants have amended independent Claims 1 and 37 to recite a platinum-iridium alloy electrode having 10-30% weight percent iridium and 70-90% weight platinum, as indicated by the Examiner to be allowable, in order to expedite issuance of allowable subject matter. The Applicants have also amended independent Claims 25 and 31 to dependent form and to depend from independent Claim 1 (as amended), in order to expedite issuance of allowable subject matter. The remaining independent Claims 20, 22, 54 and 56 have been canceled without prejudice to further prosecution on the merits.

Dependent Claims 3, 4, 21, 23, 39, 40, 55, 57 and 58 have been canceled without prejudice to further prosecution on the merits, all remaining dependent claims now depend from either independent Claims 1 or 37 (as amended) or independent Claim 64 (as allowed).

Upon entry of this Amendment, Claims 1, 2, 5, 6, 8, 10-19, 25-27, 29-38, 42-53 and 62-64 will be pending. Claims 62-64 have previously been allowed. Claims 1, 2, 5, 6, 8, 10-19, 25-27, 29-38 and 42-53 are believed to recite a combination of allowable subject matter and are now in condition for allowance. The Applicants respectfully request entry of the Amendment, withdrawal of the rejections and allowance of Claims 1, 2, 5, 6, 8, 10-19, 25-27, 29-38 and 42-53.

Claim Rejections – 35 U.S.C. § 103

All of the pending claims have been rejected under 35 U.S.C. § 103(a) in view of various references as discussed and addressed below in greater detail.

Claims 1-6, 8, 22, 23, 37-40, 42-53 and 56-58 over Niyami in view of Pike:

On page 3 of the Detailed Action, the Examiner rejected Claims 1-6, 8, 22, 23, 37-40, 42-53 and 56-58 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,993,740 (“Niyama”) in view of U.S. Patent No. 5,591,321 (“Pyke”).

Claims 20 and 21 over Niyami in view of Chang:

On page 4 of the Detailed Action, the Examiner rejected Claims 20 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Niyama in view of U.S. Patent No. 5,973,443 (“Chang”).

Claims 10-19, 25-27 and 29-36 in view of Niyama, Pyke and Wohlstadter:

On page 5 of the Detailed Action, the Examiner rejected Claims 25-27 and 29-36 under 35 U.S.C. § 103(a) as being unpatentable over Niyama in view of Pyke and U.S. Patent No. 6,207,369 (“Wohlstadter”).

Claims 54-55 in view of Niyama and Crane:

On page 7 of the Detailed Action, the Examiner rejected Claims 54-55 under 35 U.S.C. § 103(a) as being unpatentable over Niyama in view of U.S. Patent No. 3,784,928 (“Crane”).

Rejection over Liljestrand, in view of Niyama, Pyke, and Kovacs

On page 8 of the Detailed Action, Claims 1-6, 8, 10-19, 22, 23, 25-27, 30-40, 42-53 and 56-58 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,200,531 (“Liljestrand”) in view of Niyama, Pyke, and U.S. Patent No. 5,965,452 (“Kovacs”).

* * *

As previously stated, the Applicants have amended independent Claims 1 and 37 to recite a platinum-iridium alloy electrode having 10-30% weight percent iridium and 70-90% weight platinum, as indicated by the Examiner to be allowable, in order to expedite issuance of allowable subject matter. The Applicants have also amended independent Claims 25 and 31 to dependent form and to depend from independent Claim 1 (as amended), in order to expedite issuance of allowable subject matter. The remaining independent Claims 20, 22, 54 and 56 have been canceled without prejudice to further prosecution on the merits. Dependent Claims 3, 4, 21, 23, 39, 40, 55, 57 and 58 have been canceled without prejudice to further prosecution on the

merits, all remaining dependent claims now depend from either independent Claims 1 or 37 (as amended) or independent Claim 64 (as allowed). The Applicants expressly reserve the right to pursue patentability of the claimed subject matter (as previously presented) in future proceedings.

Upon entry of the present Amendment, the Applicants respectfully submit that the rejections under 35 U.S.C. § 103(a) will be moot, and that the pending claims (as amended) will be in condition for allowance. The Applicants do not necessarily acquiesce to the rejections under 35 U.S.C. § 103(a) or the characterizations of the cited references, and reserve the right to present further arguments/remarks regarding the same in future proceedings.

* * *

The Applicants respectfully submit that each and every outstanding rejection to the pending claims has been overcome, and that the Application is in condition for allowance. The Applicants respectfully request entry of the Amendment and reconsideration and allowance of pending 1, 2, 5, 6, 8, 10-19, 25-27, 29-38 and 42-53 (Claims 62-64 have previously been allowed).

The Examiner is encouraged to contact the undersigned by telephone if the Examiner believes that a telephone interview would advance the prosecution of the present Application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, the Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

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